It is well settled that the doctrine of "respondeat superior" applies only where the relation of master and servant or principal and agent exists and that neither of these relations is present where the employer does not retain control over the mode and manner of performance of the work under the contract, the one performing the work being in such case an independent contractor. STORY ON AGENCY (8th Ed.) 454; and this applies to municipal corporations as well as to individuals. DILLON ON MUNIC. CORP. (4th Ed.) 1028; *Pack* v. *Mayor of New York*, 8 N. Y. 222; *City of Cincinnati* v. *Stone et al.*, 5 Ohio St. 38; *City of Detroit* v. *Michigan Paving Co.*, 38 Mich. 358. But this exemption does not extend to a city when the work to be performed is intrinsically dangerous or where its performance necessarily constitutes an obstruction or defect in the streets, the city owing to the public the duty of keeping the streets in a safe condition for travel, which duty can not be thrown off or devolved upon another. *Storrs* v. *City of Utica*, 17 N. Y. 104; *Circleville* v. *Neuding*, 41 Ohio St. 465; *Village of Jefferson* v. *Chapman*, 127 Ill. 438; *Southwell* v. *City of Detroit*, 74 Mich. 438; *City of Logansport* v. *Dick*, 70 Ind. 65; *Savannah* v. *Waldner*, 49 Ga. 316. While recognizing the limited extent of the exemption above mentioned the court, in the principal case, said that the neutral ground being only occasionally used the hole did not necessarily constitute a defect in the street and for that reason the facts brought the case within the rule exempting contractees from liability for loss caused by the negligent acts of independent contractors. No case is cited in support of the view taken and from the fact that such neutral ground was open to the public and actually used by them it seems that the case might with equally good reason be said to be governed by the cases holding cities liable for any defects in the streets, even though the defect is caused by the act of an independent contractor.

PARTNERSHIP—ESSENTIALS—AGREEMENT TO SHARE PROFITS.—Scott had agreed with B and H, the other defendants in this action, that when he had sunk a mining shaft to a certain depth he should be entitled to one-half of the profits, all the expenses of the venture to be paid by Scott himself. Plaintiff sues B, H, and Scott as partners for materials furnished to Scott alone. The court below gave judgment against Scott but not against B and H, on the ground that a mere agreement to share profits does not effect a partnership. *Held*, that "participation in the profits of a business raises a presumption of partnership." *Tamblyn* v. *Scott et al.* (1905), — Mo. —, 85 S. W. Rep. 918.

The early English cases held that when individuals shared profits they were partners as to third persons. *Grace* v. *Smith*, 2 Wm. Bl. 998; *Waugh* v. *Carver*, 2 H. Bl. 235, 2 SMITH'S LEADING CASES, 1316. The case under discussion follows *Torbert* v. *Jeffrey*, 161 Mo. 645, 61 S. W. Rep. 823, in which substantially the same doctrine is announced. In the latter case it was held that participation in profits raised a presumption of partnership and that this presumption was conclusive unless rebutted by satisfactory evidence. There are some cases in other jurisdictions that still support this doctrine. *Brandon & Dreyer* v. *Connor*, 117 Ga. 759, 45 S. E. Rep. 371, 63 L. R. A. 260; *Cleveland* v. *Anderson*, 2 Tex. Ct. App. (Civ. Cas.) 138; *Leggett* v.

Hyde, 58 N. Y. 272; *Magovern* v. *Robertson,* 116 N. Y. 61; *Wessels & Co.* v. *Weiss & Co.,* 166 Pa. St. 490; *Cossack* v. *Burgwyn,* 112 N. C. 304. Under the modern doctrine the majority of the courts hold that partnership depends in all cases upon the contract and intention of the parties as made out by the facts of the case. *The National Surety Co.* v. *Townsend Brick Co.,* 176 Ill. 156; *Earle* v. *Literary Club,* 95 Fed. Rep. 544; *Taylor* v. *Bush,* 75 Ala. 432; *Plano Mfg. Co.* v. *Frawley,* 68 Wis. 577; *Robinson* v. *Allen,* 85 Va. 721; *Wild* v. *Davenport,* 48 N. J. L. 129, 57 Am. Rep. 552; *Dutcher* v. *Buck,* 96 Mich. 160.

PUBLIC LANDS—PATENT—RESTRICTION ON ALIENATION.—A treaty between the United States and the Duwamish Indians, made in 1855, empowered the President, "after a person or family had made a location upon land assigned for a permanent home, to issue a patent to such person or family for such assigned land." It further provided that such "tract shall not be aliened or leased for a longer term than two years, etc., (by the patentee) which conditions shall continue in force until a state constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the state shall remove the restrictions." Defendants claim as devisees under the will of P, deceased, to whom a patent in fee simple had been granted, but subject to the foregoing stipulation, which was recited. In this action by plaintiff, as heir-at-law of P, to set aside the will, *Held,* that the restriction upon alienation was valid and prohibited disposition by will, the state legislature never having taken the necessary action to remove the condition. *Jackson* v. *Thompson et al.* (1905), — Wash. —, 80 Pac. Rep. 454.

The right of the government to impose restrictions upon the alienation of land held by Indians under patent from it is well recognized. And the treaty involved in the principal case has been construed to give the patentee only the right of occupancy and possession, the absolute title remaining in the government. *Bird* v. *Winyer et al.,* 24 Wash. 269. The restrictive clause is binding upon grantees of the Indians although not contained in the original patent to them, it being considered matter of law. *Taylor et al.* v. *Brown et al.,* 5 Dak. Rep. 335. And a grant of land in fee to an Indian by the state of North Carolina prohibiting him from alienating it for a longer period than two years, although permitting its devise was held not to be repugnant to the estate conveyed, the legislative power being superior to the rules of the common law. *Smythe* v. *Henry et al.,* 41 Fed. Rep. 705. It has been frequently urged that no restraint upon alienation can be attached to a fee simple estate. This is the recognized rule in private grants. *Jones* v. *Port Huron Engine and Thresher Co. et al.,* 171 Ill. 502, although it has been suggested that partial restraint, as for a limited time, may be valid. *Kaufmann* v. *Burgert,* 195 Pa. St. Rep. 274. But this does not apply to government patents to the Indians. *Libby* v. *Clark,* 118 U. S. 250. And "alienation" prohibited in the principal case includes alienation in law as by devise. *Lane* v. *Maine Mutual Fire Ins. Co.,* 12 Me. 44.

PUBLIC OFFICERS—STATUTE OF LIMITATIONS—WHEN CAUSE OF ACTION ACCRUES.—Defendant, a register of deeds, failed to correctly record a description of land in a deed from L to complainant. This enabled creditors of L, by indebtedness created subsequent to complainant's conveyance, to levy